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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 1036

Julius C. Myers

Petitioner,

vs

The United States

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Julius C. Myers

Petitioner

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QUOTATION

Scheafer, Federalism and State Criminal Procedure Harvard L. Rev. 1, 8 (1956) 8

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CASES CITED

Powell v. Alabama, 287 U.S. 45 (1932)

Johnson v. Zerbst, 304 U.S. 458 (1938)

Gideon v. Wainwright (decided in Supreme Court on March 18, 1963)

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF CLAIMS

To the Honorable, The Chief Justice and
Associate Justices of the Supreme Court
of the United States:

The petitioner, Julius C. Myers, acting pro se, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Claims entered in the above case on February 10, 1967, (Re: Julius C. Myers vs. The United States, No. 100-66).

Jurisdiction of this Court is invoked under Title 28, United States Code, sections 1255(1), 1651(a), and 2101(c); and on the grounds that the Court of Claims sanctioned such an extreme departure from the accepted and usual course of judicial proceedings by a lower tribunal as to call for an exercise of this Court's power of supervision.

Petitioner, because of family illnesses, and through the Honorable Mr. Justice William J. Brennan, received from this Court permission to file the requested writ within a ten day extension period of the expiration date of January 11, 1968

of his normal filing time; said extended filing date being January 22, 1968.

Petitioner, on August 25, 1967, filed with the said Court of Claims a motion for relief from said judgment and same was duly entertained and denied without comment on October 13, 1967.

STATEMENT

This case concerns petitioner's March 24, 1966 (and as amended on Sept. 30, 1966) complaint petition against the United States cognizable by the United States Court of Claims under title 28, United States Code, Section 1491 and 2501. It presents the question whether the failure of petitioner to exhaust his available administrative appeal rights in respect to his April 4, 1960 involuntary removal from the Pittsburgh, Pa. Post Office precluded consideration of petitioner's complaint by the United States Court of Claims in view of the following circumstances of petitioner's administrative case:

1. Petitioner on April 4, 1960 was dismissed from his position of employ at the Pittsburgh, Pa. Post Office on a criminal charge but was deprived of his constitutional right to advice and assistance of counsel in defense of said charge.

2. Petitioner was dismissed on the strength of a charge that was so vague as to permit variance in its interpretation thus violating petitioner's constitutional

right to know the charge against him.

I.

The petitioner, on January 27, 1969 while employed as a Pittsburgh, Pennsylvania Post Office Distribution Clerk, received from that United States Postmaster a letter of charges in which said Postmaster accused him of a vile and serious crime and proposed to sever his livelihood therefor subsequent to administrative adjudication thereon. Via said letter, said Postmaster instructed petitioner to defend himself personally and in writing but failed to advise petitioner of his civil right to the advice and assistance of counsel for said defense. (Re: Exhibit A appended to Petitioner's paper entitled "Plaintiff's Motion for Relief from an Order", Court of Claims 100-66). Immediately subsequent to administrative adjudication, said postmaster on March 28, 1960 notified petitioner of his pending dismissal and advised petitioner of his right to appeal same to the Regional Civil Service Commissioner, but still said postmaster made no mention to petitioner of any information concerning the assistance of counsel.

Petitioner on April 12, 1960, and without the assistance of counsel set forth a first level appeal to the Regional Civil Service Commission and was duly entertained and denied on July 16, 1960 with the stipulation that he might further appeal his dismissal to the Board of Appeals and Reviews, Washington, D. C., within seven days. Petitioner's appeal to that Board was belated and for that reason refused consideration on October 5, 1960.

Petitioner on January 27, 1960 possessed little or no knowledge of judicial or quasi-judicial procedural rights hence he became the inexperienced accused; therefore defendants failure to advise petitioner of that procedural right which guaranteed to him to have the advice and assistance of counsel for his defense of said accusation, in effect, represented a deprival of that procedural right.

Consequently petitioner's reply to the charge, and his appeals were set forth without the advice and assistance of counsel because of defendant's denial of same. And there was in force and effect the sixth constitutional amendment which demands of the defendant:

> "In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense."

Petitioner says that it is quite conceivable that under the guidance of experienced counsel sophisticated in the ways of government tactics petitioner would not have set forth a belated second level appeal--or at least to do so would have been unusual; therefore, defendant's act of depriving petitioner of that counsel in effect contributed to petitioner's untimely appeal. Consequently, the Court of Claims' dismissal order of February 10, 1967 is based on a defndant alleged administrative defect by petitioner to which the defendant itself contributed significantly by depriving petitioner of counsel.

II.

Defendant specifically accused petitioner as follows:

> "You performed outside employment in a Pennsylvania State Liquor Control Board Store when you applied for and was granted sick leave with pay from the Postmaster, Pittsburgh, Pennsylvania, on the dates shown:...."

Thus defendant, in effect, accused petitioner of the performance of outside employment during or at the same time as his scheduled postal hours of duty. (Re: Exhibit B of petitioner's paper entitled Plaintiff's Motion for Relief From an Order, Ct. Cl. 100-66).

Said charge by postal rule 745.44a (1960 edition of United States Postal Manual) had to be set forth specifically and in detail, and defendant did set forth details. But said details clearly showed that petitioner performed outside employment at a time other than his scheduled post office hours "on the dates shown". Re: Exhibit A appended to petitioner's paper entitled, "Plaintiff's Motion for Relief From an Order," Court of Claims 100-66). Furthermore, said details were set forth as a part of the same and only sentence embodying the specific accusation, thus imparting to the charge an air of vagueness. Exemplatory of said vagueness are the following quotations. (Verification to be sent or requested from the proper agency if court desires.)

Said Postmaster February 29, 1960 in a letter to the Regional Postal Director wrote in part:

"It is recognized that the hours clerk Myers worked at his outside employment did not coincide with his post office hours . . ."

(Re: Para. 10, petitioner's original Petition to Ct. Cl. 100-66).

The Regional Appeals Board on July 16, 1960, in sustaining petitioner's dismissal wrote, in part:

"We find that there is no evidence that the agency acted in an other than expeditious manner subsequent to its discovery that the appellant was employed at an outside job coincidental with his taking of sick leave."

(Re: Para. 23, petitioner's original complaint Petition to Ct. Cl. 100-66).

The Regional Postmaster on May 1, 1962, in reply to petitioner's request for reinstatement claiming he did not perform coincidental acts stated:

"Please look again at the charge against you. It does not state that you worked for the Liquor Control Board store at the same time you asked for sick leave."

(Re: Para. 25, petitioner's original complaint Petition to Ct. Cl. 100-66).

Therefore, said Pittsburgh Postmaster in confidence admitted that petitioner did not perform coincidental acts (as charged); nonetheless, he recommended removal. Yet the Regional Appeals Board sustained petitioner's

removal on the basis of said Postmaster's written charge of coincidental acts. But said Regional Postmaster later refused to consider petitioner's reinstatement claiming that said charge did not accuse petitioner of coincidental acts. And there was in force and effect to prevent acts of variange in respect to criminal charges the VI Constitutional Amendment which states:

> "In all criminal prosecutions, the accused thall enjoy the right to be informed of the nature and cause of the accusation."

QUESTION PRESENTED

This case presents the question whether failure of petitioner to exhaust his available administrative appeal rights in respect to his administrative complaint against the United States Post Office Department precludes consideration of that complaint in the United States Court of Claims if in the course of petitioner's administrative case he, being the defendant, had been deprived of the advice of counsel and, in respect to said case, is the victim of variance by the United States Government.

REASON FOR GRANTING WRIT

Years ago, in the case of Powell vs Alabama, this Court made known its feelings in regards to counsel for the defense. This Court reiterated those feelings in Johnson v. Zerbst and again in Gideon vs. Wainwright. As reason for granting said writ, petitioner will quote those who are proficient at law.

Judge Walter V. Scheafer of the Supreme Court of Illinois has said:

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have."

The Honorable Justice Sutherland in the case of Powell vs. Alabama stated:

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of the law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted on incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.

He lacks both the skill and knowledge to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. ...."

Wherefore, petitioner respectfully prays that writ of certiorari be issued out of and under the seal of this Court, directed to the Court of Claims of the United States, sitting at Washington, D.C. to the end that this case may be reviewed and determined by this Court; that the judgment of the Court of Claims be reversed; and that petitioner be granted such other and further relief as may seem proper.

Respectfully submitted,

Julius C. Myers

Julius C. Myers,
Petitioner

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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We respectfully invite the attention of the Court to the following facts which demonstrate that the petition was filed out of time:

Petitioner seeks review (Pet. 1) of the order of the Court of Claims, entered on February 10, 1967, dismissing his petition on the ground that he had failed to exhaust his administrative remedy. No petition for a writ of certiorari was filed in this Court within the 90-day period prescribed by 28 U.S.C. 2101(c) for invoking the jurisdiction of this Court on writ of cer-

tiorari. Nor was an extension of time sought before this period expired on May 11, 1967. Accordingly, the petition for a writ of certiorari, filed on January 18, 1968, was untimely.

This conclusion is not affected by the fact that, on August 25, 1967, petitioner filed a motion for relief under Rule 69(b) of the Rules of the Court of Claims,[1] which was denied on October 13, 1967. In

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[1] Rule 69(b) provides: Relief from judgment or order.

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.; Response: On motion conforming to Rule 11 and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 68(c); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. A motion under this paragraph (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The relief provided by this rule shall be in addition to the relief available to the United States under Rule 68(a)(2). A response to a motion under this paragraph may be filed within 15 days after a motion is served.

applying for, and obtaining, an order from the Chief Justice on January 15, 1968, extending the time for the filing of a petition for a writ of certiorari to and including January 27, 1968, petitioner apparently proceeded on the erroneous assumption that the period specified in 28 U.S.C. 2101(c) did not commence to run until his post-judgment motion was denied. But Rule 69(b) explicitly provides that "[a] motion under this paragraph (b) does not affect the finality of a judgment or suspend its operation". Thus, a motion, like petitioner's, to obtain relief from a "final judgment" under that rule does not operate to suspend the running of the certiorari period.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1968.

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